CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 36 FEBRUARY 27, 2002 NO. 9

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 141

(T.D. 02–07)

RIN 1515–AD03

ANDEAN TRADE PREFERENCE ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: This is a 90-day temporary rule. Duty-free treatment for eligible articles from beneficiary countries under the Andean Trade Preference Act (ATPA) expired on December 4, 2001. This document amends the Customs Regulations on a temporary basis to provide that effective February 15, 2002, importers of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, may exercise the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. The Administration anticipates that the duty-free treatment accorded to merchandise under the provisions of the ATPA will be restored and made retroactive to the date of the initial termination of such duty-free treatment (December 4, 2001), and that there will be no extension of this extraordinary action.

After consultation with the State Department, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on products from the Andean nations. Action in this matter is also intended to relieve the importing public from having to deposit estimated duties and fees on eligible merchandise and then having to apply for a refund of the duties in the event duty-free treatment is retroactively re-authorized for such merchandise under the ATPA.

EFFECTIVE DATE: This temporary rule is effective on February 15, 2002 and expires on May 16, 2002. This temporary rule applies to imported merchandise that would have been subject to duty-free treatment had the ATPA not expired, that is entered or withdrawn from warehouse for consumption in the customs territory of the United States on or after February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Leon Hayward, Office of Field Operations, 202–927–3271.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title II of Public Law 102–182 (105 Stat. 1233), enacted on December 4, 1991, and entitled the Andean Trade Preference Act (ATPA), authorized the President to proclaim duty-free treatment for all eligible articles from any beneficiary country, to designate countries as beneficiary countries, and to proclaim duty reductions for certain goods not eligible for duty-free treatment. The ATPA is codified at 19 U.S.C. 3201–3206.

Sections 10.202–10.208 of the Customs Regulations (19 CFR 10.202–10.208) set forth the legal requirements and procedures that apply for purposes of obtaining duty-free or reduced duty treatment for articles from a beneficiary country. These articles are identified for purposes of receiving duty-free or reduced duty treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column in the HTSUS. The beneficiary countries covered by the ATPA are Bolivia, Colombia, Ecuador and Peru (General Note 11(a), HTSUS).

It is stated in 19 U.S.C. 3206(b) that no duty-free treatment extended to beneficiary countries under the ATPA will remain in effect 10 years after December 4, 1991, which, as noted above, is the date of enactment of the ATPA.

Nevertheless, the Administration anticipates that the duty-free treatment accorded to merchandise eligible for such treatment under the provisions of the ATPA will be restored and made retroactive to the date of initial termination (December 4, 2001).

After consultation with the State Department, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on merchandise from the Andean nations previously eligible for such treatment. The ATPA serves to help encourage and expand legitimate economic activities in countries combatting illegal narcotic production and trafficking and related criminal and terrorist activities.

The ATPA explicitly references that satisfying the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) of the Foreign Assistance Act of 1961 [deemed to be a reference to section 490 of the Foreign Assistance Act, codified at 22 U.S.C. 2291j] is an important factor in determining a country's eligibility to be designated as a beneficiary under the ATPA. The Andean nations that have been designated as beneficiaries under the ATPA were last determined on March 1, 2001, to satisfy these criteria. (Section 591(5) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107–115, 115 Stat. 2118, January 10, 2002), makes section 490 of the Foreign Assistance Act inoperative in

FY 2002 and provides for modified procedures which contain many of the same elements as section 490.) Accordingly, an interim deferral of estimated duties and fees in anticipation of Congressional re-enactment of the ATPA within the next 90 days is appropriate to further the national security interest in combatting narcotic production and trafficking and related criminal and terrorist activities.

To this end, Customs is amending § 141.102 of the Customs Regulations (19 CFR 141.102) to provide that as of February 15, 2002, an importer of eligible articles that, but for the expiration of the ATPA, would have been entitled to duty-free treatment under the ATPA, may exercise the option to defer the payment of estimated Customs duties and fees on the entry of those articles until May 16, 2002.

Action in this matter is intended to relieve the importing public from having to deposit estimated duties and fees on eligible merchandise and then having to apply fora refund of the duties in the event duty-free treatment is retroactively re-authorized for such merchandise under the ATPA in the next 90 days.

If an importer chooses to use the option of filing estimated duties and fees more than 10 days after the date of entry of the merchandise, Customs will require paper filings of the entry and entry summary.

ADMINISTRATIVE PROCEDURE ACT, REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

After consultation with the Department of State, the Department of Commerce, the United States Trade Representative, the Office of National Drug Control Policy, and others, it has been determined that there is a national security interest to be furthered by an interim deferral of collection of estimated duties on merchandise from the Andean nations previously eligible for such treatment. Accordingly, because the national security interest at issue involves a foreign affairs function of the United States, notice and public procedure are not required pursuant to 5 U.S.C. 553(a)(1). This action will also provide the importing public an option to avoid having to deposit estimated duties and fees on eligible merchandise and then having to apply for a refund of the duties if, as expected, duty-free treatment is retroactively re-authorized for such merchandise under the ATPA in the next 90 days. Accordingly, notice and public procedure are not required pursuant to 5 U.S.C. 553(b)(B). For these same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(a)(1) and (d)(1).

Because no notice of proposed rulemaking is required, this temporary rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor is this temporary rule a "significant regulatory action" for purposes of E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Part 141, Customs Regulations (19 CFR part 141), is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 and the specific authority citation for subpart G continue to read, and a new specific authority citation for § 141.102(e) is added in appropriate numerical order to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * * * *

Subpart G also issued under 19 U.S.C. 1505;

* * * * * * *

Section 141.102(e) also issued under 19 U.S.C. 3;

* * * * * * *

2. Section 141.102 is amended by adding a new paragraph (e) to read as follows:

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

* * * * * * *

(e) *Merchandise otherwise duty-free under Andean Trade Preference Act (ATPA).* For merchandise entered or withdrawn from warehouse for consumption in the customs territory of the United States on or after February 15, 2002, an importer of eligible articles that, but for the expiration of the Andean Trade Preference Act (ATPA), would have been entitled to duty-free treatment under the ATPA, may, at the importer's option, defer the payment of estimated Customs duties and fees on the entry of those articles until May 16, 2002. Merchandise eligible for duty-free treatment under the ATPA is identified in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the relevant "Special" rate of duty column in the HTSUS. The procedure for obtaining duty-free treatment for merchandise otherwise eligible for such treatment under the ATPA is contained in § 10.207 of this chapter. If the option is taken to deposit the estimated duties and fees more than 10 days from the date of entry, the entry and entry summary will not be accepted by Customs electronically.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 13, 2002.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, February 15, 2002 (67 FR 7070)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 13, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,
(for Douglas M. Browning, Acting Assistant Commissioner,
Office of Regulations and Rulings.)

REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF FUTON COVERS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of four tariff classification ruling letters and treatment relating to the classification of futon covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking NY G87021, dated February 21, 2001; NY C81111, dated November 13, 1997; NY 805667, dated January 11, 1995; and NY 804095, dated November 23, 1994; relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of futon covers. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of December 26, 2001, Vol. 35, No. 52. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY G87021, dated February 21, 2001; NY C81111, dated November 13, 1997; NY 805667, dated January 11, 1995 and NY 804095, dated November 23, 1994, relating to the tariff classification of futon covers under the Harmonized Tariff Schedule, was published on December 26, 2001, in Vol. 35, No. 52, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

Customs previously classified several futon covers under subheading 6302.31.9050, HTSUSA, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped: Other." Customs also classified a futon cover made of 100 percent cotton woven fabric under subheading 6302.21.2090, HTSUSA, which provided for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: of cotton: Other: Other, Other" and a futon cover made from either 100 percent polyester or 50–50 cotton/polyester blended fabric under subheading 6302.22.2030, HTSUSA, which provided for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of man-made fibers: Other, Other." Based on our analysis as set forth in HQ 965227, HQ 965228, HQ 965229, and HQ 964961, the futon covers are classifiable in heading 6304 HTSUSA, as other furnishing articles.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G87021, dated February 21, 2001 by the issuance of HQ 964961 (Attachment A); NY C81111, dated November 13, 1997 by the issuance of HQ 965227 (Attachment B); NY 805667, dated January 11, 1995 by the issuance of HQ

965229 (Attachment C); and NY 804095, dated November 23, 1994 by the issuance of HQ 965228 (Attachment D) and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed foregoing identified rulings. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this revocation will cover any rulings which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) contrary to the position set forth in this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: February 7, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2002.

CLA–2 RR:CR:TE 964961 BAS
Category: Classification
Tariff No. 6304.92.0000

ANIL MEHTA
A.P. IMPORTS, INC.
21001 Glenwold Drive
Walnut, CA 91789

Re: Revocation of NY G87021, February 21, 2001; Classification of an unstuffed futon cover.

DEAR MR. MEHTA:

This is in reply to your letter, dated February 26, 2001, on behalf of A.P. Imports, Inc., requesting reconsideration of New York Ruling Letter (NY) G87021, dated February 21, 2001, concerning the classification of an unstuffed futon cover. You submitted a sample of the futon cover to assist us in our determination.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY G87021, as described below, was published in the CUSTOMS BULLETIN, Volume 35, Number 52, on December 26, 2001. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

Facts:

The merchandise under consideration is an unstuffed futon cover. The cover will be made from either 60 percent cotton and 40 percent polyester or 70 percent cotton and 30 percent polyester woven fabric. It will be imported in two sizes either 54 x 75 inches or 39 x 75 inches. Three sides of the cover are sewn and the fourth has a zippered opening. The cover is sized to encase a 4.5-inch thick futon cushion. After importation the cover is filled with plastic foam and poly/cotton batting and zippered closed. The cushion is stitched through all layers (tufted) to hold the components together and prevent shifting. In NY G87021, the futon cover was classified in subheading 6302.31.9050, HTSUSA, which provides for bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: other: Not napped * * * Other. You argue that the futon cover should be classified in subheading 9409.90.20 as part of a mattress.

Issue:

Whether the futon cover is properly classifiable in heading 9404, HTSUSA, as an article of bedding and similar furnishing fitted with springs or stuffed or internally fitted with any material; heading 6302, HTSUSA, as bed linen; or heading 6304, HTSUSA, as an other furnishing article.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The futon cover is potentially classifiable in the following three HTSUSA headings: heading 9404, HTSUSA, as an article or bedding or similar furnishing fitted with springs or stuffed or internally fitted with any material; heading 6304, HTSUSA, as an other furnishing article; or heading 6302, HTSUSA, as bed linen.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9404

Heading 9404, HTSUSA, provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered." The ENs to heading 9404, HTSUSA, in addition, state that the heading covers *inter alia* articles of bedding which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibers, etc.) As this futon cover is not stuffed or fitted with any material, at the time of importation, it is precluded from classification in heading 9404, HTSUSA.

You assert that the merchandise at issue is a "shell" and therefore is part of the mattress. The item, although referred to as a shell, is a finished product, similar to a cushion cover, at the time of importation and therefore cannot be appropriately classified as part of a mattress. Heading 9404, HTSUSA, moreover, does not provide for parts. Since the instant futon cover as imported is a finished product, it would not be properly classifiable in heading 9404, HTSUSA.

Having precluded classification under heading 9404, HTSUSA, the next consideration is to determine under which heading of Chapter 63 the subject merchandise is classifiable. Under Chapter 63, the competing headings for the futon cover are heading 6304, HTSUSA, which provides for other textile furnishing articles, excluding those of heading 9404, HTSUSA, and heading 6302, HTSUSA, which provides for *inter alia*, bed linen.

Heading 6302

Heading 6302, HTSUSA, provides for *inter alia*, bed linen. The ENs for heading 6302, HTSUSA, state that bed linen includes, e.g. sheets, pillow cases, bolster cases, eiderdown cases and mattress covers.

A mattress cover is generally used to protect a mattress from dirt and add comfort for the sleeper. The instant futon cover may incidentally protect the futon cushion from dirt and provide additional comfort for the sleeper, yet it is significantly distinguishable from a traditional mattress cover which serves such a purpose. The instant futon cover is made of a very heavy fabric and is imported in white, burgundy, green and black. A typical mattress cover is white and made of a relatively thinner material. Unlike the subject merchandise, a typical mattress cover is generally not meant to be used for a decorative purpose. A visual examination of the subject merchandise reveals that it is clearly meant to be decorative, like a cushion cover, rather than used as a means to protect a mattress from dirt. In addition, the fact that the futon cover is imported in a variety of colors indicates that, while functional, it is likely to be used to enhance décor. Accordingly, the instant futon cover is not *esjudem generis* with the exemplars listed in the ENs to heading 6302, HTSUSA.

Heading 6304

Having precluded classification in Heading 6302, HTSUSA, we must now examine whether the futon cover is properly classified in Heading 6304, HTSUSA. Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

The ENs to heading 6304 provide that the heading covers *inter alia* furnishing articles of textile materials including bedspreads. * * * (but not including bed coverings of heading 9404), cushion covers and loose covers for furniture. The futon cover at issue is similar in function to a cushion cover. That is, it is sewn on three sides with one side open for the insertion of a cushion. The instant futon cover, moreover, conforms to the shape of the futon cushion as most cushion covers conform to the shape of the cushion covered. See HQ 951528, dated August 14, 1992; HQ 084324, dated July 20, 1989. Accordingly, the instant merchandise is *ejusdem generis* with the exemplars listed in the ENs to heading 6304 and is properly classified in heading 6304, HTSUSA.

This holding is consistent with other Customs rulings where slipcovers have been classified under heading 6304, HTSUSA. See HQ 084323, dated July 20, 1989; NY B84450, dated May 12, 1997. This holding is also consistent with rulings where other covers for seats have been classified under heading 6304. See HQ 951528, dated August 14, 1992 (cushion cover for an infant carseat is classified in heading 6304); HQ 085885, dated January 23, 1990 (infant car seat covers are more specifically provided for as "like" furniture slipcovers than as parts of cushions and are therefore properly classified in heading 6304, HTSUSA).

Having established that the proper heading for the futon cover is heading 6304 HTSUSA, classification must then be made at the appropriate subheading level. Note 2(A) to

Section XI of the HTSUSA provides in pertinent part that, "Goods classifiable in Chapters 50 to 55 or in heading No. 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material." Subheading Note 2(A) to Section XI states that "Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of Chapters 50 to 55 consisting of the same textile materials." Accordingly, because the futon cover is composed of either 60% or 70% cotton, it is properly classifiable under subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton."

Holding:

The futon cover composed of either 60 percent cotton and 40 percent polyester or 70 percent cotton and 30 percent polyester fabric is properly classified in subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The general column one rate of duty is 6.6 percent *ad valorem*. The textile quota category applicable to this provision is 369.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2002.

CLA-2 RR:CR:TE 965227 BAS
Category: Classification
Tariff No. 6304.92.0000

MR. MOHAMMAD TARIQ
TAB INTERNATIONAL USA, INC.
EMPIRE STATE BUILDING
350 Fifth Avenue
Suite 1526
New York, NY 10118

Re: Revocation NY C81111, November 13, 1997; Classification of a futon cover.

DEAR MR. TARIQ:

This is in reference to New York Ruling Letter (NY) C81111 issued to you on November 13, 1997, in response to your letter of October 28, 1997 to the Director, Customs National Commodity Specialist Division in New York, on behalf of Tab International USA request-

ing a ruling on the classification under the Harmonized Tariff Schedule of the United States Annnotated (HTSUSA) of a futon cover.

In NY C81111, a futon mattress cover from Pakistan was classified in subheading 6302.31.9050, HTSUSA, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: other: not napped * * * other. We have now had occasion to review that decision and have found it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY C81111, as described below, was published in the CUSTOMS BULLETIN, Volume 35, Number 52, on December 26, 2001. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

Facts:

The merchandise under consideration is a futon mattress cover also referred to as a futon shell. The cover is made from 55 percent cotton and 45 percent polyester woven fabric. The cover measures approximately 60 x 82 inches and encloses a 6 inch thick futon mattress. Three edges of the cover are sewn and the fourth has a zipper closure.

Issue:

Whether the futon cover is properly classifiable in heading 9401, HTSUSA, as parts of seats; heading 6302, HTSUSA, as bed linen; or heading 6304, HTSUSA, as other furnishing articles.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The futon cover is potentially classifiable in the following three HTSUSA headings: heading 9401, HTSUSA, as parts of seats, heading 6302, HTSUSA, as bed linen, or heading 6304, HTSUSA, as an other furnishing article.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9401

Heading 9401, HTSUSA, includes "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof." The ENs to heading 9401, HTSUSA, state that the heading covers *inter alia* couches, settees, sofas, ottomans and the like. Concerning parts, the ENs state that the heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung) and spiral springs assembled for seat upholstery.

Backs, bottoms, arm-rests and spiral springs are all components of the seats themselves. The futon cover, in the instant case, is not a component of a chair or seat but rather a decorative addition or an item used to protect the futon. The exemplars listed in the ENs to heading 9401, HTSUSA, are united by the fact that they are essential parts of seats as opposed to serving a primarily decorative or protective function, like the subject merchandise. The futon cover, then, is not "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in the ENs to heading 9401, HTSUSA. Accordingly, the futon cover is not properly classifiable under heading 9401, as a part of a seat. See HQ 084323, dated July 20, 1989 (slipcovers for cushions, chairs and other types of furniture imported without the cushions cannot be considered parts of seats under heading 9401, HTSUSA).

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was "part" of the child safety seat for classifica-

tion purposes. The *Bauerhin* Court reasoned that because the carseat canopy was dedicated for use with a carseat, it was properly considered a "part" under the HTSUSA.

In *Bauerhin*, the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Despite the fact that they were imported separately from the seats with which they were to be used, the canopies were nevertheless packaged and sold together with the seats as a single unit. In contrast, futon covers of the type described in NY C81111 are generally not sold as parts of the futons with which they are used. The futon covers are sold separate from the futon cushions and may be used with various futons. While the canopy was designed to fit a particular car seat, the futon covers could be used with many futons. Thus, we do not find that the *Bauerhin* rationale extends to the instant merchandise.

Having precluded classification under heading 9401, the next consideration is to determine under which heading of Chapter 63 the subject merchandise is classifiable. Under Chapter 63, the competing headings for the futon cover are heading 6302, HTSUSA, which provides for *inter alia*, bed linen or heading 6304, HTSUSA, which provides for other textile furnishing articles, excluding those of heading 9404.

Heading 6302

Heading 6302, HTSUSA, provides for *inter alia*, bed linen. The ENs for heading 6302, HTSUSA, state that bed linen includes, e.g. sheets, pillow cases, bolster cases, eiderdown cases and mattress covers.

A mattress cover is generally used to protect a mattress from dirt and add comfort for the sleeper. The instant futon cover may incidentally protect the futon cushion from dirt and provide additional comfort for the sleeper, yet it is significantly distinguishable from a traditional mattress cover which serves such a purpose. While the instant futon cover may be covered by another cover, many consumers would use it as part of their décor without additional covering. In contrast, a typical mattress cover is white and made of a relatively thin material; it is generally not meant to be used for a decorative purpose or to be seen by houseguests. Accordingly, the instant futon cover is not ejusdem generis with the exemplars listed in the ENs to heading 6302, HTSUSA.

Heading 6304

Having precluded classification in Heading 6302, HTSUSA, we must now examine whether the futon cover is properly classified in Heading 6304, HTSUSA. Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA. Heading 9404, HTSUSA, provides for mattress supports; articles of bedding and similar furnishing. The ENs to heading 9404, HTSUSA state that the heading specifically covers articles of bedding and similar furnishing which are "sprung or stuffed or internally fitted with any material." As this futon cover is not "stuffed or filled," it is precluded from classification in heading 9404, HTSUSA.

The ENs to heading 6304 provide that the heading covers *inter alia* furnishing articles of textile materials including bedspreads. (but not including bed coverings of heading 9404), cushion covers and loose covers for furniture. The futon cover at issue is similar in function to a cushion cover. That is, it is sewn on three sides with one side open for the insertion of a cushion. In addition, the instant futon cover may be removed for laundering or in accordance with a change in décor. The instant futon cover, moreover, conforms to the shape of the futon cushion as most cushion covers conform to the shape of the cushion covered. See HQ 951528, dated August 14, 1992; HQ 084324, dated July 20, 1989. Accordingly, the instant merchandise is *ejusdem generis* with the exemplars listed in the ENs to heading 6304 and is properly classified in heading 6304, HTSUSA.

This holding is consistent with other Customs rulings where slipcovers have been classified under heading 6304, HTSUSA. See HQ 084323, dated July 20, 1989; NY B84450, dated May 12, 1997. This holding is also consistent with rulings where other covers for seats have been classified under heading 6304. See HQ 951528, dated August 14, 1992 (cushion cover for an infant carseat is classified in heading 6304); HQ 085885, dated January 23, 1990 (infant car seat covers are more specifically provided for as "like" furniture slipcovers than as parts of cushions and are therefore properly classified in heading 6304, HTSUSA).

Having established that the proper heading for the futon cover is heading 6304 HTSUSA, classification must then be made at the appropriate subheading level. Note 2(A) to Section XI of the HTSUSA provides in pertinent part that, "Goods classifiable in Chapters 50 to 55 or in heading No. 5809 or 5902 and of a mixture of two or more textile materials

are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material." Subheading Note 2(A) to Section XI states that "Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of Chapters 50 to 55 consisting of the same textile materials." Accordingly, because the futon cover is composed of 55 percent cotton and 45 percent polyester woven fabric, it is properly classifiable under subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton."

Holding:

The futon cover composed of 55 percent cotton and 45 percent polyester woven fabric is properly classified in subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The general column one rate of duty is 6.6 percent *ad valorem*. The textile quota category applicable to this provision is 369.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is updated weekly and is available for inspection at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you client should contact the local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2002.

CLA–2 RR:CR:TE 965229 BAS
Category: Classification
Tariff No. 6304.92.0000

SHERYL DESJARDINS
EMERY CUSTOMS BROKERS
1555 West 23rd Street
Dallas, TX 75261

Re: Revocation of NY 805667, January 11, 1995; Classification of a futon cover.

DEAR MS. DESJARDINS:

This is in reference to New York Ruling Letter (NY) 805667 issued to you on January 11, 1995, in response to your letter of January 4, 1995, to the Director, Customs National Commodity Specialist Division in New York, on behalf of Harlee International, requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States Annnotated (HTSUSA) of a futon cover.

In NY 805667, dated January 11, 1995, a futon cover was classified in subheading 6302.31.9050, HTSUS, which provides for bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped: Other. We have now had occasion to review that decision and found it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement

Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 805667, as described below, was published in the CUSTOMS BULLETIN, Volume 35, Number 52, on December 26, 2001. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

Facts:

The merchandise under consideration is a futon mattress cover made of 51 percent cotton and 49 percent polyester woven fabric. The article contains two zippers beginning at one of the narrow ends of the cover, and continuing down three quarters the length of each long side. It measures approximately 54 x 75 inches and encloses up to a 6 inch thick futon mattress. The sample you submitted was hunter green.

Issue:

Whether the futon cover is properly classifiable in heading 9401, HTSUSA, as parts of seats; heading 6302, HTSUSA, as bed linen; or heading 6304, HTSUSA, as an other furnishing article.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The futon cover is potentially classifiable in the following three HTSUSA headings: heading 9401, HTSUSA, as parts of seats; heading 6302, HTSUSA, as bed linen, or heading 6304, HTSUSA, as an other furnishing article.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9401

Heading 9401, HTSUSA, includes "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof". The ENs to heading 9401, HTSUSA, state that the heading covers *inter alia* couches, settees, sofas, ottomans and the like. Concerning parts, the ENs state that the heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung) and spiral springs assembled for seat upholstery.

Backs, bottoms, arm-rests and spiral springs are all components of the seats themselves. The futon cover, in the instant case, is not a component of a chair or seat but rather a decorative addition or an item used to protect the futon. The exemplars listed in the ENs to heading 9401, HTSUSA, are united by the fact that they are essential parts of seats as opposed to serving a primarily decorative or protective function, like the subject merchandise. The futon cover, then, is not "*ejusdem generis*" or "of the same kind" of merchandise as the exemplars listed in the ENs to heading 9401, HTSUSA. Accordingly, the futon cover is not properly classifiable under heading 9401, as a part of a seat. See HQ 084323, dated July 20, 1989 (slipcovers for cushions, chairs and other types of furniture imported without the cushions cannot be considered parts of seats under heading 9401, HTSUSA).

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was "part" of the child safety seat for classification purposes. The *Bauerhin* Court reasoned that because the carseat canopy was dedicated for use with a carseat, it was properly considered a "part" under the HTSUSA.

In *Bauerhin*, the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Despite the fact that they were imported separately from the seats with which they were to be used, the canopies were nevertheless packaged and sold together with the seats as a single unit. In contrast, futon covers of the type described in NY 805667, are generally not sold as parts of the futons with which they are used. The futon covers are typically sold separate from the fu-

ton cushions and are to be used with various futons. While the canopy was designed to fit a particular car seat, the futon covers at issue may be used with many futons. Thus, we do not find the *Bauerhin* rationale extends to the instant merchandise.

Having precluded classification under heading 9401, the next consideration is to determine under which heading of Chapter 63 the subject merchandise is classifiable. Under Chapter 63, the competing headings for the futon mattress cover are heading 6302, HTSUSA, which provides for *inter alia*, bed linen or heading 6304, HTSUSA, which provides for other textile furnishing articles, excluding those of heading 9404.

Heading 6302

Heading 6302, HTSUSA, provides for *inter alia*, bed linen. The ENs for heading 6302, HTSUSA, state that bed linen includes, e.g. sheets, pillow cases, bolster cases, eiderdown cases and mattress covers.

A mattress cover is generally used to protect a mattress from dirt and add comfort for the sleeper. The instant futon cover may incidentally protect the futon cushion from dirt and provide additional comfort for the sleeper, yet it is significantly distinguishable from a traditional mattress cover which serves such a purpose. While the instant futon cover may be covered by another cover, many consumers would use it as part of their décor without additional covering. In contrast, a typical mattress cover is white and made of a relatively thin material; it is generally not meant to be used for a decorative purpose or to be seen by houseguests. Accordingly, the instant futon cover is not *ejusdem generis* with the exemplars listed in the ENs to heading 6302, HTSUSA.

Heading 6304

Having precluded classification in Heading 6302, HTSUSA, we must now examine whether the futon cover is properly classified in Heading 6304, HTSUSA. Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA. Heading 9404, HTSUSA, provides for mattress supports; articles of bedding and similar furnishing. The ENs to heading 9404, HTSUSA state that the heading specifically covers articles of bedding and similar furnishing which are "sprung or stuffed or internally fitted with any material." As this futon cover is not "stuffed or filled," it is precluded from classification in heading 9404, HTSUSA.

The ENs to heading 6304 provide that the heading covers *inter alia* furnishing articles of textile materials including bedspreads * * * (but not including bed coverings of heading 9404), cushion covers and loose covers for furniture. The futon slipcover at issue is similar in function to a cushion cover. That is, it contains two zippers beginning at one of the narrow ends of the cover and continuing down three quarters the length of each long side. The zippered openings allow for the insertion of a cushion. In addition, the instant futon cover may be removed for laundering or in accordance with a change in décor. The instant futon cover, moreover, conforms to the shape of the futon cushion as most cushion covers conform to the shape of the cushion covered. See HQ 951528, dated August 14, 1992; HQ 084324, dated July 20, 1989. Accordingly, the instant merchandise is *ejusdem generis* with the exemplars listed in the ENs to heading 6304 and is properly classified in heading 6304, HTSUSA.

This holding is consistent with other Customs rulings where slipcovers have been classified under heading 6304, HTSUSA. See HQ 084323, dated July 20, 1989; NY B84450, dated May 12, 1997. This holding is also consistent with rulings where other covers for seats have been classified under heading 6304. See HQ 951528, dated August 14, 1992 (cushion cover for an infant carseat is classified in heading 6304); HQ 085885, dated January 23, 1990 (infant car seat covers are more specifically provided for as "like" furniture slipcovers than as parts of cushions and are therefore properly classified in heading 6304, HTSUSA).

Having established that the proper heading for the futon cover is heading 6304 HTSUSA, classification must then be made at the appropriate subheading level. Note 2(A) to Section XI of the HTSUSA provides in pertinent part that, "Goods classifiable in Chapters 50 to 55 or in heading No. 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material." Subheading Note 2(A) to Section XI states that "Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of Chapters 50 to 55 consisting of the same textile materials." Accordingly, because the futon cover is composed of 51 per-

cent cotton and 49 percent polyester woven fabric, it is properly classifiable under subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton."

Holding:

The futon cover composed of 51 percent cotton and 49 percent polyester woven fabric is properly classified in subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The general column one rate of duty is 6.6 percent *ad valorem*. The textile quota category applicable to this provision is 369.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 7, 2002.

CLA–2 RR:CR:TE 965228 BAS
Category: Classification
Tariff No. 6304.92.0000 and 6304.93.0000

EDDY LIN
IBS RESEARCH, INC.
2700 Imperial Hwy.
Bldg. G
Brea, CA 92621

Re: Revocation of NY 804095, November 23, 1994; Classification of a futon cover.

DEAR MR. LIN:

This is in reference to New York Ruling Letter (NY) 804095 issued to you on November 23, 1994, in response to your letter of November 14, 1994, to the Director, Customs National Commodity Specialist Division in New York, on behalf of IBS Research, Inc. requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a futon cover.

In NY 804095, dated November 23, 1994, a printed futon cover made of 100 percent cotton woven fabric was classified in subheading 6302.21.2090, HTSUSA, which provided for "Bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: Of cotton: Other: Other, other." Futon covers of either 100 percent polyester or 50–50 poly/cotton blended fabric were classified in subheading 6302.22.2030, HTSUSA, which provided for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of man-made fibers: Other, Other." We have now had occasion to review that decision and found it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 804095, as described below, was published in the CUSTOMS BULLETIN, Volume 35, Number 52, on December 26, 2001. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

Facts:

The merchandise under consideration, which you referred to as a sofa cover, is a printed cover for a full size futon mattress. The cover is made from either 100 percent cotton woven fabric, 100 percent polyester woven fabric, or blended woven fabric composed of 50 percent cotton and 50 percent polyester. A zippered opening extends around three sides of the cover. It measures approximately 54 x 75 inches and will enclose a 4 inch thick mattress.

Issue:

Whether the futon cover is properly classifiable in heading 9401, HTSUSA, as parts of seats; heading 6302, HTSUSA, as bed linen; or heading 6304, HTSUSA, as an other furnishing article.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The futon cover is potentially classifiable in the following three HTSUSA headings: heading 9401, HTSUSA, as parts of seats, heading 6302, HTSUSA as bed linen or heading 6304, HTSUSA, as an other furnishing article.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9401

Heading 9401, HTSUSA, provides for "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof." The ENs to heading 9401, HTSUSA, state that the heading covers *inter alia* couches, settees, sofas, ottomans and the like. Concerning parts, the ENs state that the heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung) and spiral springs assembled for seat upholstery.

Backs, bottoms, arm-rests and spiral springs are all components of the seats themselves. The futon cover, in the instant case, is not a component of a chair or seat but rather a decorative addition or an item used to protect the futon. The exemplars listed in the ENs to heading 9401, HTSUSA, are united by the fact that they are essential parts of seats as opposed to serving a primarily decorative or protective function, like the subject merchandise. The futon cover, then, is not "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in the ENs to heading 9401, HTSUSA. Accordingly, the futon cover is not properly classifiable under heading 9401, as a part of a seat. See HQ 084323, dated July 20, 1989 (slipcovers for cushions, chairs and other types of furniture imported without the cushions cannot be considered parts of seats under heading 9401, HTSUSA).

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was "part" of the child safety seat for classification purposes. The *Bauerhin* Court reasoned that because the carseat canopy was dedicated for use with a carseat, it was properly considered a "part" under the HTSUSA.

In *Bauerhin*, the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Despite the fact that they were imported separately from the seats with which they were to be used, the cano-

pies were nevertheless packaged and sold together with the seats as a single unit. In contrast, futon covers of the type described in NY 804095 are generally not sold as parts of the futons with which they are used. The futon covers are sold separate from the futon cushions and may be used with various futons. While the canopy was designed to fit a particular car seat, the futon covers at issue may be used with many futons. Thus, we do not find that the *Bauerhin* rationale extends to the instant merchandise.

Having precluded classification under heading 9401, the next consideration is to determine under which heading of Chapter 63 the subject merchandise is classifiable. Under Chapter 63, the competing headings for the futon mattress cover are heading 6302, HTSUSA, which provides for *inter alia*, bed linen or heading 6304, HTSUSA, which provides for other textile furnishing articles, excluding those of heading 9404.

Heading 6302

Heading 6302, HTSUSA, provides for *inter alia*, bed linen. The ENs for heading 6302, HTSUSA, state that bed linen includes, e.g. sheets, pillow cases, bolster cases, eiderdown cases and mattress covers.

A mattress cover is generally used to protect a mattress from dirt and add comfort for the sleeper. While the instant futon cover may incidentally protect the futon cushion from dirt and provide additional comfort for the sleeper, it is significantly distinguishable from a traditional mattress cover which serves such a purpose. A typical mattress cover is usually beige or white and made of a relatively thin material. A mattress cover is generally not meant to be used for a decorative purpose and is usually not seen by houseguests. In contrast, a consumer would likely select the instant futon cover because of its print and its decorative value. Accordingly, the instant futon slipcover is not ejusdem generis with the exemplars listed in the ENs to heading 6302, HTSUSA.

Heading 6304

Having precluded classification in Heading 6302, HTSUSA, we must now examine whether the futon cover is properly classified in Heading 6304, HTSUSA. Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA. Heading 9404, HTSUSA, provides for mattress supports; articles of bedding and similar furnishing. The ENs to heading 9404, HTSUSA state that the heading specifically covers articles of bedding and similar furnishing which are "sprung or stuffed or internally fitted with any material." As this futon cover is not "stuffed or filled," it is precluded from classification in heading 9404, HTSUSA.

The ENs to heading 6304 provide that the heading covers *inter alia* furnishing articles of textile materials including bedspreads * * * (but not including bed coverings of heading 9404), cushion covers and loose covers for furniture. The futon cover at issue is similar in function to a cushion cover. That is, it is sewn on three sides with one side open for the insertion of a cushion. In addition, the instant futon cover may be removed for laundering or in accordance with a change in décor. The instant futon cover, moreover, conforms to the shape of the futon cushion as most cushion covers conform to the shape of the cushion covered. See HQ 951528, dated August 14, 1992; HQ 084324, dated July 20, 1989. Accordingly, the instant merchandise is *ejusdem generis* with the exemplars listed in the ENs to heading 6304 and is properly classified in heading 6304, HTSUSA.

This holding is consistent with other Customs rulings where slipcovers have been classified under heading 6304, HTSUSA. See HQ 084323, dated July 20, 1989; NY B84450, dated May 12, 1997. This holding is also consistent with rulings where other covers for seats have been classified under heading 6304. See HQ 951528, dated August 14, 1992 (cushion cover for an infant carseat is classified in heading 6304); HQ 085885, dated January 23, 1990 (infant car seat covers are more specifically provided for as "like" furniture slipcovers than as parts of cushions and are therefore properly classified in heading 6304, HTSUSA).

Having established that the proper heading for the futon cover is heading 6304 HTSUSA, classification must then be made at the appropriate subheading level. The 100 percent cotton futon cover is properly classified under subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The 100 percent polyester woven fabric futon cover is properly classified under subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers."

The futon cover composed of 50 percent cotton and 50 percent polyester would be classified in accordance with Note 2(A) to Section XI of the HTSUSA which provides in pertinent part that, "Goods classifiable in Chapters 50 to 55 or in heading No. 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material. When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration." Subheading Note 2(A) to Section XI states that "Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of Chapters 50 to 55 consisting of the same textile materials." Accordingly, because the futon cover is composed of 50 percent cotton and 50 percent polyester woven fabric, it is properly classifiable under subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers."

Holding:

The 100 percent cotton futon cover is properly classified under subheading 6304.92.0000, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The general column one rate of duty is 6.6 percent *ad valorem*. The textile quota category applicable to this provision is 369. The 100 percent polyester woven fabric futon cover is properly classified under subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers." The general column one rate of duty is 9.7 percent *ad valorem*. The textile quota category applicable to this provision is 666.

The futon cover composed of 50 percent cotton and 50 percent polyester fabric is properly classified in subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers." The general column one rate of duty is 9.7 percent *ad valorem*. The textile quota category applicable to this provision is 666.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER & TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC CONTACT LENS CASE

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a plastic contact lens case.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a plastic contact lens case. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Notice of proposed revocation was published in the CUSTOMS BULLETIN of January 9, 2002, Vol. 36, No. 2. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textiles Branch, (202) 927–1679.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was pub-

lished on January 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 2, proposing to revoke Headquarters Ruling Letter 082698, dated February 21, 1990, pertaining to the classification of a plastic contact lens case under the Harmonized Tariff Schedule of the Untied States (HTSUS). No comments were received.

In HQ 082698, concerning the tariff classification of a contact lens case of molded plastic, the product was erroneously classified as a plastic article for the conveyance of goods under heading 3923 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). However, the Explanatory Notes ("EN") to heading 3923 specifically limit the classification of products within heading 3923 to commercial goods. Therefore, a personal article such as a contact lens case is precluded from classification in heading 3923, HTSUSA. It is Customs view that the contact lens case is more properly classified in heading 4202, HTSUSA, as a specially shaped and fitted container. Heading 4202, HTSUSA, is divided into two portions. Those articles listed before the semi-colon are not restricted as to the material composition, whereas those articles listed in the second portion must be constructed of the materials specifically listed in the tariff *i.e.*, of leather or composition leather, sheeting of plastics, textile material, vulcanized fiber, or paperboard, or wholly or mainly covered with such materials or with paper. The subject merchandise is precluded classification within the second part of heading 4202 due to the molded plastic construction which is not a material specifically named in the second part of the heading. However, since goods in the first part of heading 4202, HTSUSA, may be of any material, classification is proper therein, since the contact lens case is specifically shaped and fitted and similar to the containers enumerated in the first part of the heading.

The articles enumerated in the EN's to heading 3923, HTSUS, are items, which by the nature of their size or use, are designated for a commercial purpose and not for "household use". The contact lens case is intended for personal use in order to organize, store, transport and protect the contact lenses when not worn by the individual. The small size of the case which is intended to only hold one pair of contact lenses would preclude any sort of "commercial" application. Therefore classification of the subject merchandise is precluded from heading 3923, HTSUSA and the case is more appropriately classified in heading 4202, HTSUSA.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 082698, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Headquarter Ruling (HQ) 965266 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise.

Although in this notice Customs is specifically referring to one ruling, HQ 082698, this notice covers any rulings relating to the specific is-

sue(s) of tariff classification set forth in HQ 082698, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice, memorandum or decision or protest review decision) on the issue(s) subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 8, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 8, 2002.

CLA-2 RR:CR:TE 965266 mbg
Category: Classification
Tariff No. 4202.39.9000

MS. SIEGI SPYROPOULOS
ALLERGAN INTERNATIONAL
2525 Dupont Drive
Irvine, CA 92715

Re: Classification of a plastic contact lens case; Revocation of HQ 082698.

DEAR MS. SPYROPOULOS:

On February 21, 1990, U.S Customs issued Headquarters Ruling Letter ("HQ") 082698 to your company regarding the classification under the Harmonized Tariff Schedule of the

United States Annotated ("HTSUSA") of a plastic contact lens case. Upon review of HQ 082698, Customs has determined that the contact lens case was erroneously classified and HQ 082698 is hereby revoked for the reasons set forth below.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on January 9, 2002, in Vol. 36, No. 2 of the CUSTOMS BULLETIN, proposing to revoke HQ 082698 and to revoke the treatment pertaining to the classification of a plastic contact lens case. No comments were received in response to this notice.

Facts:

The subject merchandise is a container used for the storage of contact lenses when the lenses are not worn. The merchandise is manufactured of molded plastic and measures approximately 1 inch wide, ½ of an inch high and 2¼ inches long. A contact lens is intended to be stored in each side of the container. The merchandise has two caps, labeled "L" and "R", which screw onto the base of the container. You have stated that the lens case was manufactured in Taiwan.

Issues:

Whether the subject contact lens case of molded plastic is properly classified in Chapter 39 as an article of plastics or in Chapter 42 as a container under the HTSUSA?

Whether the subject contact lens case is considered an "article for the conveyance of goods" in heading 3923, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the heading of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

Due to the plastic construction and intended purpose of the subject merchandise, multiple tariff headings must be considered for proper classification. The competing headings under the HTSUSA which must be considered for classification of the subject merchandise include: heading 3923, which provides for *inter alia*, articles for the conveyance or packing of goods, of plastics and heading 4202, which provides for *inter alia*, containers.

I. Classification within Chapter 39, HTSUSA

A. Heading 3923, HTSUSA

Heading 3923, HTSUS, provides for articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. Legal Note 2(ij), to Chapter 39 excludes from Chapter 39, saddlery or harness (heading 4201) or trunks, suitcases, handbags or other containers of heading 4202, HTSUS. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 3923 state:

> The heading excludes, *inter alia*, household articles such as dustbins, and cups which are used as tableware or toilet articles and do not have the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes (heading 39.24), containers of heading 42.02 and flexible intermediate bulk containers of heading 63.05.

The articles enumerated in the EN's to heading 3923, clearly indicate items, which by the nature of their size or use, are designated for a commercial purpose and not for "household use". The contact lens case is intended for personal use in order to store, transport and protect the contact lenses when not worn by the individual. The small size of the case, which is intended to only hold one pair of contact lenses, would preclude any sort of "commercial" application and therefore classification of the subject merchandise is precluded from heading 3923, HTSUSA.

In HQ 963501, dated March 23, 2000, Customs reviewed the scope of heading 3923 and the types of articles said to be for articles for the conveyance or packaging of goods in a

commercial sense. In HQ 963501, concerning the classification of a plastic tissue box, Customs stated:

> Customs first began to reconsider the scope of heading 3923, HTSUSA, by noting that the exemplars listed in the EN to heading 3923, HTSUSA, were used generally to convey or transport goods over long distances and often in large quantities. *See* HQ 087635, dated October 24, 1990; HQ 951404, dated July 24, 1992; and HQ 953841, dated September 27, 1993. Next, Customs indicated that heading 3923, HTSUSA, was generally reserved for articles used for shipping purposes. *See* HQ 089825, dated April 9, 1993; HQ 953275, dated April 26, 1993; and HQ 953458, dated April 16, 1993. In 1993, Customs took the position that heading 3923, HTSUSA, provided for cases and containers of bulk goods and commercial goods and not personal items. *See* HQ 954072, dated September 2, 1993. This position has been consistently followed since 1993. *See* HQ 954816, dated December 7, 1993; HQ 955660, dated September 27, 1994; HQ 955047, dated October 6, 1994; HQ 957894, dated December 14, 1995; HQ 957895, dated December 14, 1995; HQ 958174, dated January 31, 1996; HQ 959116, dated January 7, 1997; HQ 960199, dated May 15, 1997; HQ 960430, dated December 24, 1997; HQ 959780, dated February 17, 1998; HQ 959522, dated May 20, 1998; HQ 959846, dated October 28, 1998; HQ 961517, dated November 6, 1998; HQ 961049, dated January 5, 1999; and HQ 960811, dated February 3, 1999. Items such as sequined beaded waist bags, molded plastic carrying cases for drawing materials, molded plastic tote bags, molded plastic pencil cases and molded plastic hinged cases for computer disks have been classified outside of heading 3923, HTSUSA, based on findings that the articles were designed to carry personal effects. *See* HQ 954816, HQ 957894, HQ 959116, HQ 960199 and HQ 959780 (cited above). Similarly, the tissue box is designed to carry personal effects and is not designed to carry bulk or commercial goods. Accordingly, the tissue box is not properly classifiable in heading 3923, HTSUSA.

In regards to the subject contact lens case, Customs reaffirms the holding in HQ 963501, and similarly finds that the contact lens case is not classifiable in heading 3923, HTSUSA, as it is not designed to transport bulk or commercial goods. Customs is in the process of reviewing prior rulings which have erroneously classified molded plastic articles of a personal nature such as contact lens cases, pencil holders, etc, within heading 3923, HTSUSA, and will revoke or modify any such rulings accordingly.

B. Heading 3926, HTSUSA

Heading 3926, HTSUSA, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the heading is the basket provision for plastic articles not described more specifically elsewhere in the tariff schedule. Customs finds that the plastic article is not classified in heading 3926, HTSUSA, because the contact lens case, which is specially shaped and fitted to hold contact lenses, is more specifically described in heading 4202, HTSUSA, for the reasons set forth below.

II. Classification within Chapter 42, HTSUSA

As previously stated, Legal Note 2 (ij) to Chapter 39, HTSUSA, provides, "This chapter does not cover * * * trunks, suitcases, handbags or other containers of heading 4202;."

For application of this Legal Note, a determination must be made as to whether the subject contact lens case is considered a "container of 4202." The articles specifically enumerated within heading 4202, HTSUSA are "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper."

The EN to heading 4202 state, in pertinent part:

> This heading covers **only** the articles specifically named therein and similar containers.
>
> These containers may be rigid or with a rigid foundation, or soft and without foundation.
>
> [T]he articles covered by the first part of the heading may be of any material. The expression "similar containers" in the first part includes hat boxes, camera accessory

cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). The expression "similar containers" in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc

As referenced above, heading 4202, HTSUSA, is divided into two portions. Those articles listed before the semi-colon are not restricted as to the material composition, whereas those articles listed in the second portion must be constructed of the materials specifically listed in the tariff *i.e.*, of leather or composition leather, of sheeting of plastics, of textile material, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper. Application of the ENs to the subject merchandise would preclude classification within the second part of heading 4202 due to the molded plastic construction which is not a material specifically named in the second part of the heading. *See* Headquarters Ruling Letter (HQ) 950779, dated April 1, 1992.

However, since goods in the first part of the heading may be of any material, classification may be proper if the merchandise is determined to be specifically shaped and fitted. The first portion of heading 4202, HTSUSA, specifically lists trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers.

However, this heading encompasses the articles enumerated, as well as containers similar to these articles and is therefore relevant for discussion of the subject contact lens case. Under the rule of *ejusdem generis*, the phrase "similar articles" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)).

Furthermore, in *Totes Inc., v. United States*, 18 C.I.T. 919, 865 F. Supp. 867, 871 (1994), the Court of International Trade concluded that the "essential characteristics and purpose of the Heading 4202 exemplars are * * * to organize, store, protect and carry various items." The Court also ruled that by virtue of *ejusdem generis* the residual provision for "similar containers" in heading 4202, HTSUS, is to be broadly construed. It is evident from the above referenced court case that a broad interpretation as to the types of articles that are classifiable as similar containers to those named in heading 4202, is clearly supported and upheld by the Court of International Trade. The subject contact lens case is of a kind designed to provide storage, protection, organization and to a certain extent portability, purposes which unite the exemplars of heading 4202, HTSUS, as confirmed in *Totes*.

Pursuant to the rule of *ejusdem generis*, contact lens cases have previously been classified in heading 4202, HTSUSA, in New York Ruling Letter ("NY") B87047, dated July 23, 1997, and NY A83640, dated June 12, 1996. However, in each of these rulings the contact lens cases under consideration were not constructed of molded plastic. In NY B87047, the contact cases was constructed of leather and in NY A83640, the contact case was constructed with an outer surface of textile materials.

As the contact lens case is not one of the named exemplars, its classification in the first portion of heading 4202, HTSUSA, depends on its similarity to one of the named articles. The contact lens case is not similar to the first six articles. The first six articles are generally large articles, often hand-carried by means of an attached handle and used to carry items other than smaller items normally carried in the pocket or handbag. The contact lens case is small and designed to carry only one pair of contact lenses with one lens placed in each compartment. Therefore, the contact lens case is somewhat similar to the remaining six articles in the first part of the heading. These six containers are made to carry one specific article (although some may also accommodate small accessories or parts like a lens cap or cleaning rod), and are often form-fitted to the particular item to be carried. Accordingly, we find that the contact lens case is classifiable as a specially shaped or fitted container in the first part of heading 4202, HTSUSA.

Holding:

HQ 082698, dated February 21, 1990 is hereby revoked.

The subject contact lens case is properly classified in subheading 4202.39.9000, HTSUSA, which provides for "Trunks, * * *, spectacle cases, binocular cases, camera cases, mu-

sical instrument cases, gun cases, holsters and similar containers; * * *: Articles of a kind normally carried in the pocket or in the handbag: Other: Other." The general column one duty rate is 20 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A MAN'S WOVEN UPPER BODY GARMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of a man's woven upper body garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter relating to the tariff classification of a man's upper body garment under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 29, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927–1009.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended

and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of a man's woven upper body garment. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) G82775, dated October 13, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In NY G82775 , Customs ruled that the subject garment, identified as "Microfiber Headwind Sports", was classifiable in subheading 6211.33.0040, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-

made fibers, shirts excluded from heading 6205." This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is an outerwear jacket, and is properly classified in subheading 6201.93.3511, HTSUSA, which provides for, "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other, Men's."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY G82775 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964619 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 12, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY.

CLA-2-62:RR:NC:WA:355 G82775
Category: Classification
Tariff No. 6201.93.3000,
6201.93.3511, and 6211.33.0040

MS. PING LIN
SUN MOUNTAIN SPORTS
P.O. Box 9049
Missoula, MT 59807

Re: The tariff classification of men's woven garments from China, Hong Kong, Taiwan, Korea, Sri Lanka and Myanmar.

DEAR MS. LIN:

In your letter dated October 3, 2000, you requested a classification ruling.

You submitted five samples of men's garments made of woven fabric. In your letter you state that the garments are all treated with a Dupont Teflon water-resistant finish. You do not state if the garments have been subjected to any tests for water resistance, nor do you

claim that the garments are water-resistant. No style numbers were given to the garments.

The first garment is described as Microfiber Headwind Solid, made of 100 percent polyester peached microfiber fabric, lined with 100 percent nylon taffeta fabric. It features long sleeves with rib knit cuffs, two side seam pockets, a rib knit v-neck opening and an elastic rib knit waist.

The second garment is described as Microfiber Glen Plaid Headwind, made of 100 percent polyester peached microfiber fabric, lined with 100 percent nylon taffeta fabric. It features long sleeves with rib knit cuffs, a rib knit v-neck opening and an elastic rib knit waist. It does not have pockets.

The third garment is described as Microfiber Headwind Solo, made of 100 percent polyester peached microfiber fabric with no lining. It features long sleeves with rib knit cuffs, a rib knit v-neck opening and an elastic rib knit waist. It does not have pockets.

The fourth garment is described as Microfiber Reversible Headwind. It is made of 100 percent polyester peached microfiber fabric on both sides. It features long sleeves with rib knit cuffs, a rib knit v-neck opening and an elastic rib knit waist. and pockets on both sides of the reversible garment.

The fifth garment is described as Microfiber Headwind Sports, made of 100 percent polyester peached microfiber fabric with no lining. It features long sleeves with rib knit cuffs. a rib knit v-neck opening and an elastic rib knit waist. There is an 11-inch long side seam zipper opening which breaks at the waistband. The garment does not have pockets.

The applicable subheading for the Microfiber Headwind Solid and the Microfiber Reversible Headwind, if they pass the test for water resistance. will be 6201.93.3000 Harmonized Tariff Schedule of the United States (HTS), which provides for other men's or boys' anoraks, (including ski-jackets), windbreakers and similar articles (including padded sleeveless jackets), of man-made fibers, other: water resistant. The duty rate will be 7.3 percent ad valorem.

If the Microfiber Headwind Solid and the Microfiber Headwind Reversible do not pass the water resistance test, the applicable subheading for these garments will be 6201.93.3511, Harmonized Tariff Schedule of the United States (HTS), which provides for other men's anoraks, (including ski-jackets), windbreakers and similar articles (including padded sleeveless jackets), of man-made fibers, other. The duty rate will be 28.4 percent ad valorem.

The applicable subheading for the Microfiber Glen Plaid Headwind, the Microfiber Headwind Solo and the Microfiber Headwind Sports will be 6211.33.0040, Harmonized Tariff Schedule of the United States (HTS) which provides for track suits, ski-suits and swimwear, other garments, men's or boys', of man-made fibers, shirts excluded from heading 6205. The duty rate will be 16.4 percent ad valorem.

The Microfiber Headwind Solid and the Microfiber Headwind Reversible fall within textile category designation 634. Based upon international textile trade agreements products of China, Hong Kong, Taiwan, Korea, and Sri Lanka are subject to quota and the requirement of a visa. Products of Myanmar are not subject to quota and do not require a visa.

The Microfiber Glen Plaid Headwind, the Microfiber Headwind Solo and the Microfiber Headwind Sports fall within textile category designation 640. Based upon international textile trade agreements products of China, Hong Kong, Taiwan, Korea, and Sri Lanka are subject to quota and the requirement of a visa. Products of Myanmar are not subject to quota and do not require a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions

regarding the ruling, contact National Import Specialist Camille Ferraro at 212–637–7082.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2: RR:CR:TE 964619 ASM
Category: Classification
Tariff No. 6201.93.3511

MS. PING LIN
SUN MOUNTAIN SPORTS
P.O. Box 9049
Missoula, MT 59807

Re: Modification of G82775; Man's woven upper body garment; Outerwear jacket.

DEAR MS. LIN:

Based upon our review of a ruling to you concerning the classification of a man's upper body garment which was classified in New York Ruling (NY) G82775, dated October 13, 2000, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have determined that the classification provided for this merchandise is incorrect. This ruling modifies NY G82775 by providing the correct classification for the man's upper body garment.

Facts:

The garment, which is the subject of this ruling, was identified as "Microfiber Headwind Sports" in NY G82775. In NY G82775, this article was classified under subheading 6211.33.0040, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers, shirts excluded from heading 6205." A single sample was forwarded to this office with correspondence requesting a review of NY G82775, and only the "Microfiber Headwind Sports" garment was identified as being at issue. Thus, we have not reviewed the classification of the other garments identified in NY G82775.

The subject article is a man's woven upper body garment consisting of 100 percent polyester "peached" microfiber fabric. The subject garment has a shallow v-neck with ribbed knit inset (1 inch wide), long sleeves with ribbed knit cuff (2 inches wide), ribbed knit waist (2 inches wide), and a body length of approximately 24 inches. In addition, a ribbed knit panel (2.5 inches wide) has been sewn from collar to cuff and descends the full length of the sleeve. The body of the garment consists of a single woven front panel. A single woven back panel connects to the front panel at the side seams and shoulders. A heavy gauge zipper (11 inches long) extends the length of the left side seam from under the arm to the bottom of the garment, breaking at the waistband. The zipper features a tab pull that has been threaded and securely sewn to the zipper foot. The garment has been coated with "TEFLON" protection that is a durable water repellent. The labeling for this garment advertises the "TEFLON" fabric protector and promotes the article as water repellent outerwear. There is no lining and the garment does not have pockets.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1

provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

First, it is important to note that the subject garment is constructed of both woven panels (front, back, sleeves) and ribbed knit trim (cuffs, v-neck, waist, sleeve trimming). In Headquarters Ruling (HQ) 958288, dated November 29, 1995, we stated "Usually, when Customs is faced with the classification of a garment that is comprised of a woven material and knit, we refer to a set of classification guidelines set forth in Customs Headquarters Memorandum 084118 (Customs Memorandum), dated April 13, 1989" in order to determine the essential character of a garment. In this memorandum, it was determined that the woven panels overlaying the knit fabric were mere decorative trim more similar to an "accessory" to the garment within the meaning of the EN to Chapter 61. The ruling further stated that if the woven panels had been viewed as an integral component of the garment, a GRI 3 analysis would be appropriate and the guidelines contained in the Customs Memorandum applied. However, as mere decorative trim, the woven panels were disregarded and the entire article was classified as a knit garment pursuant to a GRI 1 analysis. *See,* also HQ 950007, dated October 4, 1991.

In the subject case, we note that the knit trim is so minimal that it merely serves as an accessory to the garment. The woven panels comprise approximately 95 percent of the total surface area of the garment. As such, it is our determination that the knit trim is not an integral component of the garment, a GRI 3 analysis is not necessary, and the guidelines contained in the Customs Memorandum do not need to be applied to determine the essential character. Accordingly, the article is properly classified as a woven garment pursuant to a GRI 1 analysis.

Chapter 62, HTSUSA, provides for woven garments because it applies to made up articles of any textile fabric, other than wadding, and excludes knitted or crocheted articles (other than those of heading 6212). See Note 1, Chapter 62, HTSUSA.

In determining whether or not the subject article is classifiable as an outerwear jacket within the meaning of heading 6201, HTSUSA, we note that the subject garment has features that are typical of both an ordinary pullover garment and an outerwear garment. In such situations, it is appropriate to consult the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, C.I.E. 13/88, November 23, 1988 (Textile Guidelines), The Textile Guidelines set forth eleven criteria by which to classify a garment as a jacket under the HTSUSA. If the garments possess at least three of the eleven features, and if the result is not unreasonable, the articles will be classified as a coat/jacket. In relevant part, the guidelines state as follows:

> *Shirt-jackets* have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. They may be within the coat category if designed to be worn over another garment (other than underwear). The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:
>
> 1) Fabric weight equal to or exceeding 10 ounces per square yard.
> 2) A full or partial lining.
> 3) Pockets at or below the waist.
> 4) Back vents or pleats. Also side vents in combination with back seams.
> 5) Eisenhower styling.
> 6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
> 7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
> 8) Lapels.

9) Long sleeves without cuffs.
10) Elasticized or rib-knit cuffs.
11) Drawstring, elastic or rib-knit waistband.

In the subject case, the garment possesses at least three of the eleven jacket features enumerated in the Textile Guidelines as follows: 1) a heavy-duty zipper; 2) rib-knit cuffs; 3) rib-knit waistband. Thus, the subject garment may be classifiable as an outerwear jacket/coat if the result is not unreasonable. In addition to having met three of the guideline criteria, the garment also features a water repellent "TEFLON" fabric protection, and is advertised as a waterproof outerwear garment designed for use during golf. However, we note that this garment is merely advertised as having a "water repellent" coating. No additional evidence has been submitted to support the degree to which it resists water. Thus, we have no basis upon which to find that it should be classified as a "water resistant" garment within the meaning of the HTSUSA.

The EN to heading 6101, which apply *mutatis mutandis* to the articles of heading 6201, HTSUSA, state:

> This heading covers * * * garments for men or boys, characterised by the fact that they are generally worn over all other clothing for protection against the weather.

Clearly, the subject garment is designed to be used as a final protective outerwear layer over clothing because the side zipper allows the wearer to easily slip the article over bulky clothing. Finally, the water repellent coating invites use of the garment as a final protective layer against the elements.

In view of the foregoing, it is Customs determination that it is reasonable to classify this garment as a jacket under heading 6201.93.3511, HTSUSA. This decision is supported by HQ 964203, dated December 4, 2000, wherein Customs classified a man's pullover article, almost identical to the one now in question, as an outerwear jacket under heading 6201.93.3511, HTSUSA. In HQ 964203, the garment is described as being constructed of (woven) nylon fabric, having a v-neck collar with rib knit band, no front opening, long sleeves with rib knit cuffs, a knit lining of polyester/cotton fabric, and a rib knit waistband, with plastic (acrylic coating).

Holding:

NY G82728, dated October 13, 2000, is hereby modified.

The subject merchandise is correctly classified in subheading 6201.93.3511, HTSUSA, which provides for, "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets) windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Other, Men's." The general column one duty rate is 28.2 percent *ad valorem*. The textile category is 634.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A PORTABLE VIDEO PLAYER WITH A TEXTILE CONTAINER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to the tariff classification of a portable video player with a textile container.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a portable video player with a textile container and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on January 9, 2002. One comment was received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927–2391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 9, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 2, proposing to revoke ruling letter, NY F86942 dated May 23, 2000, and revoke the tariff treatment pertaining to the tariff classification of a portable video player with a textile container. The only comment received in response to this notice supported Customs proposed revocation.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY F86942, dated May 23, 2000, Customs found that a portable video player was classified in subheading 8521.10.3000, HTSUS, as a video recording or reproducing apparatus, whether or not incorporating a video tuner, magnetic tape type, color, cartridge or cassette type, not capable of recording. Customs also found that the textile container for the portable video player was classifiable in subheading 4202.92.9026, HTSUS, which provides for trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper; other, with outer surface of sheeting of plastic or of textile materials; other, other, other, with outer surface of textile materials; other, of man-made fibers; and subject to quota and/or visa requirements.

Customs has reviewed the matter and determined that the correct classification of the portable video player and its container is in subheading 8528.21.55, HTSUS, which provides for reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors; video monitors, color, with a flat panel screen; incorporating video recording or reproducing apparatus; with a video display diagonal not exceeding 34.29 cm, and the textile container will not be subject to quota and/or visa requirements pursuant to General Rules of Interpretation (GRIs) 5(a).

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F86942 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964149. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs revokes any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964149, revoking NY F86942 is set forth as the "Attachment" to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 11, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 11, 2002.

CLA-2 RR:CR:GC 964149 KBR
Category: Classification
Tariff No. 8528.21.55

JOHN BESSICH
FOLLICK & BESSICH
33 Walt Whitman Road
Suite 204
Huntington Station, NY 11746

Re: Reconsideration of NY F86942; Portable Video Player with a Textile Container.

DEAR MR. BESSICH:

This is in reference to your letter dated June 8, 2000, on behalf of Audiovox Corp., in which you requested reconsideration of New York Ruling Letter (NY) F86942, issued to you by the Customs National Commodity Specialist Division, on May 23, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a portable video player with a textile container. We have reviewed the prior ruling and have determined that the classification provided is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agree-

ment Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on January 9, 2002, in Vol. 36, No. 2 of the CUSTOMS BULLETIN, proposing to revoke NY F86942. Your letter supporting the proposed revocation was the only comment received in response to this notice. This ruling revokes NY F86942 by providing the correct classification for the portable video player with textile container.

Facts:

NY F86942 concerns the Audiovox Rampage VBP 1000 Portable Video Cassette Player. It comprises a VHS format video cassette player with a flip-up 4 inch LCD color monitor. The player does not have a television receiver or tuner capability and cannot record. The controls for turning on the power, playing a cassette tape and adjusting the volume are on the front of the player. The player has front video/audio input jacks (Video In, Audio In R, Audio In L). There are jacks for 2 sets of headphones on the front. There are two 3 ¼ inch speakers built into the unit, one on each side of the player. There is no video output jack for viewing on a monitor or television other than the attached flip-up 4 inch monitor.

A nylon container, mounting straps, AC/DC power adapter and power cables are also included with the player. The nylon container is made to the specific dimensions of the player. There is an attached shoulder strap on the case for carrying the player. The case is padded to protect the player and the sides have 4 rings for the straps to attach the case to a car seat to secure the player in a vehicle. There are also loop straps attached to the case for securing the player with a standard automobile seat belt. The case has 2 mesh patches, one on each side of the case, located where the speakers appear on the player, so that the speakers may be heard through the case. There is a zippered bottom accessory compartment made for holding the power cables and a reinforced opening in the bottom of the case for the power cables to attach from the player to an external power source. The front of the case has 2 zippered mesh gussets which when unzipped allow the player to hang at a 15 degree angle for proper viewing of the monitor, easier access to the player's controls and also allows the speakers to be heard. There is a thin zippered compartment along the front of the case.

In NY F8692 it was determined that the portable video cassette player was a video recording or reproducing apparatus, whether or not incorporating a video tuner, magnetic tape type, color, cartridge or cassette type, not capable of recording, classifiable under subheading 8521.10.3000, HTSUS. The case for the player was found to be separately classifiable as a textile case under subheading 4202.92.9026, HTSUS, and subject to textile quota/visa requirements. We have reviewed that ruling and determined that the classification of the portable video cassette player and textile container is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject portable video cassette player and textile container?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and simi-

	lar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:
	Other:
4202.92	With outer surface of sheeting of plastic or of textile materials:
	Other:
4202.92.90	Other
8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner:
8521.10	Magnetic tape-type
	Color, cartridge or cassette type:
8521.10.30	Not capable of recording
8528	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
	Video monitors:
8528.21	Color:
	With a flat panel screen:
	Incorporating video recording or reproducing apparatus:
8528.21.55	With a video display diagonal not exceeding 34.29 cm

The portable video cassette player is comprised of two components, the cassette player and an LCD monitor. Section XVI Note 4, HTSUS, states that "[w]here a machine * * * consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function." The instant article has the clearly defined function of playing cassette tapes for viewing. Video cassette players by themselves are generally classified in heading 8521, HTSUS, as video recording or reproducing apparatus. However, exclusionary note (b) in the ENs for heading 8521, HTSUS, excludes video monitors from being classified in that heading.

Video monitors are classifiable in heading 8528, HTSUS. This heading also includes reception apparatus for television. Video monitors use the same technology as a television, using a cathode ray tube (CRT) or a liquid crystal display (LCD) to present a visual display on a screen. An LCD is a type of flat panel screen. A video monitor differs from the standard "television" in that it does not have a tuner to receive a broadcast television signal. A monitor requires a separate device to provide the data it will reproduce on its screen. This can be a device with a receiver of a broadcast television signal, a camera feeding a live picture, a device which plays a cassette tape or DVD, or a device which plays a game. The video monitor in this case has no tuning capability, but accepts an electrical impulse from the video cassette player which the monitor converts to a visual display on an LCD screen. This uses the same type of signal that a normal household television or a video monitor would accept from a standard home video cassette player. EN (6) for heading 8528, HTSUS, includes video monitors as described with an LCD screen within this heading.

Color video monitors are classified in subheading 8528.21, HTSUS. Further, subheading 8528.21.55, HTSUS, describes the instant article in its entirety, as a video monitor, color, with a flat panel screen, incorporating video recording or reproducing apparatus, with a video display diagonal not exceeding 34.29 cm. Therefore, the instant portable video player in its entirety is properly classified in subheading 8528.21.55, HTSUS.

Now, we will consider the classification of the included textile container. GRI 5(a) states:

> Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character".

The ENs for GRI 5(a) state that this rule covers only containers which:

> (1) are specifically shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;

(2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;

(3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;

(4) are of a kind normally sold with such articles; and

(5) do not give the whole its essential character.

In this instance we find that the textile container, when imported with the article, qualifies as a GRI 5(a) container. It is specifically shaped and fitted for the portable video cassette player. The mesh panels are specifically located to allow the sound to be heard from the speakers. The container is imprinted with the name of the article. The container has gussets which are only useful for angling the player for the correct viewing angle in a vehicle and also allowing the sound to be heard through the speaker. The container has metal loops for securing it to a vehicle and an opening in the bottom through which the power cord may be attached. Although the player may be used in a home and the container would not be needed, because of the small size of the LCD screen, the player is unlikely to be used in a home where a full size television would be available. The intent of this article is clearly its portability. Further, if it is used in a home, we believe that the padded case would likely still be used to protect the article. The container does not provide the essential character to the portable video cassette player. Therefore, the textile container qualifies as a container under GRI 5(a). As such, the textile container is included under the same classification with the video cassette player. Further, since the textile container qualifies under GRI 5(a), it is not subject to quota or visa requirements. *See* NY C84178 (February 5, 1998), NY B89146 (September 8, 1997).

You state that Audiovox may import some containers separately (unassociated with the video cassette player) and empty. These would be used to replace defective containers. In that situation, the containers which are imported separate from the video cassette players will be separately classifiable in subheading 4202.92.9026, HTSUS, and subject to quota and visa requirements. *See, e.g.*, HQ 962439 (April 9, 2001) (extra containers imported empty do not qualify under GRI 5, but must be classified separately).

Holding:

Pursuant to GRI 1 and 5(a), the portable video cassette player with a textile container, are classified in subheading 8528.21.55, HTSUS, as reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors, video monitors, color, with a flat panel screen, incorporating video recording or reproducing apparatus, with a video display diagonal not exceeding 34.29 cm.

Extra textile containers are classified in subheading 4202.92.9026, HTSUS, as trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper; other; with outer surface of sheeting of plastic or of textile materials; other; other; of man-made fibers; carry quota category 670, and will be subject to quota and visa requirements.

Effect on Other Rulings:

NY F86942, dated May 23, 2000, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF TEXTILE BAGS WITH DRAWSTRINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to the classification of textile bags with drawstrings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two ruling letters relating to the tariff classification of textile bags with drawstrings under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 29, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927–1009.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchan-

dise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of textile bags with drawstrings. Although in this notice, Customs is specifically referring to two New York Rulings (NY) G83311 dated November 2, 2000, and NY G83306 dated November 2, 2000, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In NY G83311, Customs ruled that all four of the subject articles identified as style numbers 12–120–04, 12–120–07, 12–120–73, 12–120–72, were classified under subheading 4202.92.3031, HTSUSA. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that all four articles are correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other."

In NY G83306, Customs ruled that the subject articles identified as style numbers 12–116, 12–120, were classified under subheading 4202.92.3031, HTSUSA. This ruling letter is set forth as "Attachment B" to this document. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that the articles are correct-

ly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G83311 and NY G83306, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964711 (see "Attachment C" to this document) and 964712 (see "Attachment D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 12, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 2, 2000.

CLA–2–42:RR:NC:TA:341 G83311
Category: Classification
Tariff No. 4202.92.3031

MR. MARTY LANGTRY
TOWER GROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: The tariff classification of duffel bags from China.

DEAR MR. LANGTRY:

In your letter dated October 11, 2000, on behalf of Home Products International, you requested a classification ruling for duffel bags.

The samples submitted are identified as style numbers 12–120–04, 12–120–07, 12–120–73 and 12–120–72. The items are duffel bags manufactured of man-made textile materials designed to contain clothing during travel. Each bag is substantially constructed to be a carrying bag and is identical to the *eo nomine* "traveling bags" of heading 4202. Although the articles are packaged for retail sale as laundry bags, they are *eo nomine* provided for in heading 4202, HTS. The top of each bag is secured by means of a drawstring closure with a cord lock fastener.

The applicable subheading for the duffel bags will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, other, of man-made fibers, other. The duty rate will be 18.6 percent ad valorem.

HTS 4202.92.3031 falls within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and chan-

ges. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212–637–7091.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 2, 2000.

CLA–2–42:RR:NC:TA:341 G83306
Tariff No. 4202.92.3031

MR. MARTY LANGTRY
TOWER GROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: The tariff classification of duffel bags from China.

DEAR MR. LANGTRY:

In your letter dated October 11, 2000, on behalf of Home Products International, you requested a classification ruling for duffel bags.

The samples submitted are identified as styles 12–120 "Carry-All Bag" and 12–116 "Laundry Bag". The items are duffel bags manufactured of durable lightweight nylon and are designed to contain clothing during travel. Although the instant items are packaged for use as laundry bags, each are the same as the *eo nomine* "traveling bags" of heading 4202. The top of each bag is secured by means of a drawstring closure with a cord lock fastener. The drawstring also doubles as a carrying strap.

The applicable subheading for the duffel bags will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, other, of man-made fibers, other. The duty rate will be 18.6 percent ad valorem.

HTS 4202.92.3031 falls within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212–637–7091.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 964711 ASM
Category: Classification
Tariff No. 6307.90.9889

MS. MARTY LANGTRY
MANAGEMENT CONSULTANT
TOWERGROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: Request for reconsideration and revocation of NY G83311; Textile bags with drawstrings imported from China; Other made up articles, Heading 6307; Not Heading 4202, HTSUSA.

DEAR MS. LANGTRY:

This is in response to your letter, on behalf of Home Products International requesting reconsideration of Customs New York Ruling (NY) G83311 which involved the classification of textile bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G83311 by providing the correct classification for the subject textile bags with drawstrings. Samples have been submitted and reviewed by this office.

Facts:

The subject articles are advertised as laundry bags and identified under the following style numbers and names as follows:

- 12–120–04, "CarryAll Cloth Laundry Bag"
- 12–120–07, "CarryAll Cloth Laundry Bag"
- 12–120–73, "Pack 'n Pouch Specialty Bag"
- 12–120–72, "Bag'n Carry"

The sample identified as "CarryAll Cloth Laundry Bag" (12–120–04; 12–120–07) are 19 inches x 30 inches and constructed of lightweight woven fabric of 65 percent polyester, 35 percent cotton. These articles are composed of two panels which have been attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

The article identified as the "Pack n' Pouch Specialty Bag"™ (12–120–73) is 24 inches x 36 inches and constructed of a mesh fabric of 100 percent polyester. This article is composed of two panels which have been attached by one bottom seam and two side seams. A large zippered mesh pouch (approx. 13 inches high x 15 inches wide) has been sewn onto the front. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem. A single carrying strap has been securely sewn to the back of the bag.

The "Bag n' Carry"™ (12–120–72) is 22 inches x 32 inches. The top two thirds of the article is constructed of 100 percent polyester mesh fabric. This article is composed of two panels which have been attached by one bottom seam and two side seams. The bottom one-third portion of the article is constructed of 100 percent woven nylon fabric. In addition,

the top hem is composed of the same woven fabric. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

In NY G83311, dated November 2, 2000, all four of the subject articles identified as style numbers 12–120–04, 12–120–07, 12–120–73, 12–120–72, were classified as containers under subheading 4202.92.3031, HTSUSA. The quota category for this provision is 670.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

Additional U.S. Notes to Chapter 42 state, in relevant part: "1. For the purposes of heading 4202, the expression *'travel, sports and similar bags'* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel * * *".

The EN to 4202 indicates that the heading covers only the articles specifically named and similar containers. We note that "laundry bags" are not specifically named in heading 4202, HTSUSA. Accordingly, we must determine whether they are similar to the travel or sports bags specified in 4202. However, in order to classify the subject goods as "similar" under 4202, HTSUSA, we must look to factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867(1994), *aff'd.* 69 F. 3d 495 (1995), the Court of Appeals stated as follows:

> As applicable to classification cases, ejusdem generis requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated eo nomine [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, "* * * to organize, store, protect and carry various items."

The subject merchandise does not have the capability to protect clothing or other essential items during travel. Each bag is constructed of relatively lightweight material with two of the bags having see-through mesh panels. The mesh bags would be especially susceptible to snags, frays, and tears. One of the mesh bags has a single carry strap; however, this single feature is insufficient to render the bag suitable for travel or sports use. Each of the bags has a single drawstring closure, which is impractical for extended travel because the excess drawstring loop could easily drag or catch. Furthermore, such a drawstring closure fails to completely secure the contents of the bag; small items could slip through the opening. Thus, it is Customs determination that none of these bags are *ejusdem generis* to the travel or sports bags of heading 4202, HTSUSA.

The subject bags are distinct from the drawstring bags of HQ 963575, dated October 12, 1999, wherein various textile bags identified as "stuff sacks" were classified as "travel * * * and similar bags" under subheading 4202.92.3031, HTSUSA. The bags in HQ 963575 featured waterproof fabric, zippers, a handle, and a protective interior flap to secure the drawstring closure. Furthermore, these bags were specifically designed and advertised to organize, store, protect and carry sleeping bags and other essentials during camping trips.

Inasmuch as the articles now in question are not classifiable under heading 4202, HTSUSA, they would not be precluded from classification in 6307, HTSUSA, pursuant to the EN for 6307 that excludes: "(b) Travel goods * * * and all similar containers of **heading 42.02.**" The EN to 6307 further specifies that the heading particularly includes: "(5) Domestic laundry * * * bags." The Webster's *New Collegiate Dictionary (1979)* defines "laundry" as "clothes or linens that have been or are to be laundered." The definition for "launder" or "laundered" is "to wash (as clothes) in water: to make ready for use by washing and ironing: to wash or wash and iron clothing or household linens." The term "bag" is defined as a "flexible container that may be closed for holding, storing, or carrying something." Thus, it would follow that a "laundry bag" is a type of flexible container, with a closure, used to hold clothes or linens for laundering purposes. Webster's dictionary defines "domestic" as "of or relating to the household or the family."

The subject merchandise consists of woven/mesh bags of a size and shape suited for domestic use and intended to contain clothes or linens for laundering purposes. In the instant case, all four bags are advertised, packaged, promoted and intended for use as domestic laundry bags. The packaging clearly identifies the article as a "laundry bag." The packaging also demonstrates the use of the item by displaying a picture of the bag, packed with towels, sheets, clothing, and a container of laundry detergent. Customs has previously ruled that such textile bags with drawstrings are classifiable under heading 6307, HTSUSA, as "Other made up articles." In Headquarters Ruling (HQ) 954948, dated October 28, 1993, a textile bag with drawstring comprised of a lightweight cotton fabric with an intended use of packaging and transporting covered candy at retail, was classified as an other made-up article in subheading 6307.90.9986, HTSUSA. In reaching this decision, Customs noted that drawstring pouches of insubstantial construction, which are not specially shaped or fitted to contain specific merchandise, are not similar to the containers enumerated in heading 4202, HTSUSA. See HQ 953177, dated April 7, 1993; HQ 953176, dated March 16, 1993; HQ 088411, dated April 23, 1991; HQ 086852, dated May 10, 1990.

Holding:

NY G83311 is hereby revoked.

The subject merchandise is correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other." The general column one duty rate is 7 percent *ad valorem.*

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964712 ASM
Category: Classification
Tariff No. 6307.90.9889

MS. MARTY LANGTRY
MANAGEMENT CONSULTANT
TOWERGROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: Request for reconsideration and revocation of NY G83306 Textile bags with drawstrings imported from China; Other made up articles, Heading 6307; Not Heading 4202, HTSUSA.

DEAR MS. LANGTRY:

This is in response to your letter, on behalf of Home Products International requesting reconsideration of Customs New York Ruling (NY) G83306 which involved the classification of textile bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G83306 by providing the correct classification for the subject textile bags with drawstrings. Samples have been submitted and reviewed by this office.

Facts:

The subject articles are advertised as laundry bags and identified under the following style numbers and names as follows:

- 12–116, "Jumbo Laundry Bag"
- 12–120, "CarryAll Laundry Bag"

The sample identified as the "Jumbo Laundry Bag" (12–116) is 24 inches x 36 inches and constructed of lightweight woven fabric of 100 percent nylon. This article is composed of two panels attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

The article identified as the "CarryAll Laundry Bag" (12–120) is 19 inches x 30 inches and constructed of a lightweight woven fabric of 65 percent polyester and 35 percent cotton. This article is composed of two panels which have been attached by one bottom seam and two side seams. Overlock stitching secures an open hem at the top. A single cord with a plastic "Cordlock"™ has been threaded through the top hem.

In NY G83306, dated November 2, 2000, both the subject articles identified as style numbers 12–116 and 12–120, were classified under subheading 4202.92.3031, HTSUSA. The quota category for this provision is 670.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper.

Additional U.S. Notes to Chapter 42 state, in relevant part: "1. For the purposes of heading 4202, the expression *'travel, sports and similar bags'* means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel * * *".

The EN to 4202 indicates that the heading covers only the articles specifically named and similar containers. We note that "laundry bags" are not specifically named in heading 4202, HTSUSA. Accordingly, we must determine whether they are similar to the travel or sports bags specified in 4202. However, in order to classify the subject goods as "similar" under 4202, HTSUSA, we must look to factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867(1994), *aff'd.* 69 F. 3d 495 (1995), the Court of Appeals stated as follows:

> As applicable to classification cases, ejusdem generis requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated eo nomine [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, "* * * to organize, store, protect and carry various items."

The subject merchandise does not have the capability to protect clothing or other essential items during travel. Each of the bags has a single drawstring closure, which is impractical for extended travel because the excess drawstring loop could easily drag or catch. Furthermore, such a drawstring closure fails to completely secure the contents of the bag; small items could slip through the opening. Thus, it is Customs determination that none of these bags are *ejusdem generis* to the travel or sports bags of heading 4202, HTSUSA.

The subject bags are distinct from the drawstring bags of HQ 963575, dated October 12, 1999, wherein various textile bags identified as "stuff sacks" were classified as "travel * * * and similar bags" under subheading 4202.92.3031, HTSUSA. The bags in HQ 963575 featured waterproof fabric, zippers, a handle, and a protective interior flap to secure the drawstring closure. Furthermore, these bags were specifically designed and advertised to organize, store, protect and carry sleeping bags and other essentials during camping trips.

Inasmuch as the articles now in question are not classifiable under heading 4202, HTSUSA, they would not be precluded from classification in 6307, HTSUSA, pursuant to the EN for 6307 that excludes: "(b) Travel goods * * * and all similar containers of **heading 42.02.**" The EN to 6307 further specifies that the heading particularly includes: "(5) Domestic laundry * * * bags." The Webster's *New Collegiate Dictionary (1979)* defines "laundry" as "clothes or linens that have been or are to be laundered." The definition for "launder" or "laundered" is "to wash (as clothes) in water: to make ready for use by washing and ironing: to wash or wash and iron clothing or household linens." The term "bag" is defined as a "flexible container that may be closed for holding, storing, or carrying something." Thus, it would follow that a "laundry bag" is a type of flexible container, with a closure, used to hold clothes or linens for laundering purposes. Webster's dictionary defines "domestic" as "of or relating to the household or the family."

The subject merchandise consists of woven bags of a size and shape suited for domestic use and intended to contain clothes or linens for laundering purposes. In the instant case, both bags are advertised, packaged, promoted and intended for use as domestic laundry bags. The packaging clearly identifies the article as a "laundry bag." The packaging also demonstrates the use of the item by displaying a picture of the bag, packed with towels, sheets, clothing, and a container of laundry detergent. Customs has previously ruled that

such textile bags with drawstrings are classifiable under heading 6307, HTSUSA, as "Other made up articles." In Headquarters Ruling (HQ) 954948, dated October 28, 1993, a textile bag with drawstring comprised of a lightweight cotton fabric with an intended use of packaging and transporting covered candy at retail, was classified as an other made-up article in subheading 6307.90.9986, HTSUSA. In reaching this decision, Customs noted that drawstring pouches of insubstantial construction, which are not specially shaped or fitted to contain specific merchandise, are not similar to the containers enumerated in heading 4202, HTSUSA. See HQ 953177, dated April 7, 1993; HQ 953176, dated March 16, 1993; HQ 088411, dated April 23, 1991; HQ 086852, dated May 10, 1990.

Holding:

NY G83306 is hereby revoked.

The subject merchandise is correctly classified in subheading, 6307.90.9889, HTSUSA, which provides for, "Other made up articles, including dress patterns: Other: Other: Other, Other, Other." The general column one duty rate is 7 percent *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Decisions of the United States Court of International Trade

(Slip Op. 02–13)

UNITED STATES, PLAINTIFF *v.*
OWATONNA RECOGNITION, INC. AND LIN MEI CO., DEFENDANTS

Court No. 99–10–00638

[Motion to Compel; Granted.]

(Decided February 12, 2002)

Robert D. McCallum, Jr., Assistant Attorney General; *David M. Cohen*, Director, International Trade Field Office; *A. David Lafer*, Senior Trial Counsel; *Kent G. Huntington*, Trial Attorney, Commercial Litigation Branch, Civil Division, Department of Justice, for Plaintiff

William D. Outman, II, Baker & McKenzie, Washington, D.C., for Owatonna Recognition, Inc.

Steven L. Nelson, Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, Iowa, for Newton Company

OPINION

I

PRELIMINARY STATEMENT

WALLACH, *Judge:* This is a civil penalties case in which the plaintiff United States (the "Government") alleges that defendants Owatonna Recognition, Inc. ("Owatonna") and Lin Mei Co. ("Lin Mei") participated in a double-invoicing system that caused merchandise to be entered or introduced into the United States by means of material and false documents, resulting in the undervaluation of imported lapel pins and deprivation of the United States Customs Service ("Customs") of duties.

Pursuant to USCIT Rule 37, the Government moves for an order compelling Owatonna to fully respond to all outstanding discovery requests propounded by the Government. For the reasons set forth below, the court grants the Government's motion.

II

BACKGROUND

On December 22, 2000, the Government served upon Owatonna its first set of interrogatories and request for production of documents.

Owatonna's response was due on January 22, 2001. Owatonna failed to respond by that date.

On June 4, 2001, the Government served upon Owatonna its second set of interrogatories and request for production of documents. Owatonna again failed to respond.

On July 20, 2001, the Government moved for an order compelling a response to its outstanding discovery requests. On August 20, 2001, Owatonna responded to the Government's motion by serving responses to the Government's first and second set of interrogatories and requests for production of documents.

On November 2, 2001, the Government sent a letter to Owatonna saying that its discovery responses were unresponsive, incomplete, or otherwise inadequate. On November 20, 2001, the Government sent Owatonna a letter noting that it had not received a response from Owatonna to the concerns raised in its November 2 letter. On December 7, 2001, the Government sent a third letter to Owatonna, again noting that it had not yet received a response. Owatonna responded to the Government's letters on December 18, 2001.

Meanwhile, on November 30, 2001, the Government submitted its third set of interrogatories and request for production of documents. Before receiving Owatonna's responses to its third set of discovery requests, the Government, on December 18, 2001, filed Plaintiff's Request to Supplement [its] Pending Motion to Compel ("Plaintiff's Motion").

Owatonna filed its response to the Government's third set of interrogatories and request for production of documents on December 27, 2001, and its Defendant's Response to Plaintiff's Request to Supplement [its] Pending Motion to Compel ("Defendant's Response") on January 4, 2002.

III

ANALYSIS

Although, in some fashion and at some time, Owatonna has responded to all of the Government's outstanding discovery requests, the Government nevertheless complains that "Owatonna has: (1) refused to produce whole categories of documents; (2) refused to provide complete copies of documents and, instead, produced redacted versions absent any claim of privilege; and (3) refused to provide an [sic] complete responses to the interrogatories and served incomplete responses in their stead." Plaintiff's Motion at 3.

Based on these alleged inadequacies, the Government requests an order: (1) "compelling the production of the three sets of documents Owatonna has completely refused to produce [accounting general ledger information or computer records, Federal income tax records, filings made to the state of Iowa]"; (2) "compelling the production of redacted documents in their complete form, and all other documents in their entirety, including, but not limited to, Owatonna's board minutes from 1992 to present"; (3) "compelling Owatonna to provide an explanation

of what type of search was conducted prior to representing that it has no documents responsive to certain of [the Government's] requests, including the identity of the individual(s) who performed the searches, and an explanation of who performed the redactions made and the guidelines used"; (4) compelling Owatonna to fully identify Ms. Malone, to provide her present or last-known address, and to answer whether she was consulted by Owatonna in providing its response to [the Government's] requests"; and (5) "compelling Owatonna to fully respond to [the Government's] interrogatories requesting information regarding Owatonna's communication with, and services provided by, its sister subsidiary corporations, including but not limited to, Pella Plastics." Plaintiff's Motion at 13–14.

As noted, Plaintiff's Motion was filed with the court December 18, 2001 and Defendant's Response to Plaintiff's Third Set of Interrogatories and Requests for Production of Documents ("Defendant's Responses to the Third Set of Interrogatories") was filed December 27, 2001. Certain of the Government's requests were mooted by those responses. The court therefore addresses only those requests that are still relevant.

A

Documents Owatonna Has Failed to Produce

The Government urges the court to order Owatonna to produce "accounting general ledger information relating to the 74 import entries at issue or any computer records that support these accounting entries," "Federal income tax records or any materials that support the filings it made," and "filings [Owatonna] made to the state of Iowa from 1992 to present."[1] Plaintiff's Motion at 5.

1

Accounting Records

The Government asserts that it requires "Owatonna's accounting records that relate to the 74 entries at issue, and any documents related thereto, because [it] has not received documentary evidence to support Owatonna's claim that it

> filed the documentation * * * with the Customs Service in the belief that Customs duties were assessable based on the prices charged by the various Taiwanese vendors who supplied the lapel pens to Lin Mei. Ms. Beth Malone, who was formerly employed by defendant, has represented that she believed this to be the proper basis of valuation for the imported products.

Plaintiff's Motion at 5–6 (citations omitted). Owatonna objects to the Government's request by questioning the relevance of the requested records.

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[1] The Government's request for Owatonna's filings made to the Secretary of State of Iowa is now moot since Defendant's Response to the Third Set of Interrogatories addresses that request. *See* Defendant's Response to the Third Set of Interrogatories at 2.

Parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery. * * *" USCIT R. 26(b)(1). "The concept of relevance for discovery purposes is extremely broad." *Sellick Equip. Ltd. v. United States*, 18 CIT. 352, 354 (1994). "'It is not too strong to say that a request for discovery should be considered relevant if there is *any possibility* that the information sought may be relevant to the subject matter of the action.'" *Id.* (emphasis added) (quoting *AM Int'l, Inc. v. Eastman Kodak Co.*, 100 F.R.D. 255, 257 (N.D. Ill. 1981)).

Owatonna has made an argument that its documentation relating to the entries of subject merchandise is not false because Owatonna, or certain employees of Owatonna, believed that duties were assessable based on the value of the merchandise to be imported. The documents requested by the Government are relevant to determining the value of the subject merchandise and assessing Owatonna's proffered defense as to why its import documentation is not false. The Government thus may obtain such documents through discovery.

2

INCOME TAX MATERIALS

In its second set of interrogatories, the Government directed Owatonna to "[d]escribe fully any and all communications between senior personnel or officers of Owatonna and Newton Corporation concerning the 74 entries at issue." Plaintiff's Second Set of Interrogatories and Request for Production of Documents to Owatonna Recognition, Inc. at 4. Owatonna responded, "As Owatonna Recognition operated as an independent corporation, there would not have been the need for interaction of Owatonna and Newton personnel as this situation was simply the administration of operating processes." Defendant's Response to Plaintiff's Second Set of Interrogatories and Request for Production of Documents ("Defendant's Response to Second Set of Interrogatories") at Interrogatory No. 5. In order to verify Owatonna's claim that it is an independent company, the Government requested Owatonna's Federal income tax filings. Owatonna has, however, "refused to produce any of its Federal income tax records or any materials that support the filings it made." Plaintiff's Motion at 5.

Owatonna objects to the Government's request on a number of grounds. First, Owatonna maintains that it does not file a Federal income tax return, but rather files a consolidated return with Newton Manufacturing Company. Second, Owatonna argues that tax return information is available to the U.S. Customs Service only by a specific request for such information in accordance with section 6103 of the Internal Revenue Code, entitled "Confidentiality of Returns." *See* 26

U.S.C. § 6103(l)(14).[2] Finally, Owatonna claims that the Government's "request for information has no founding." Defendant's Response, Exhibit C (Letter to Mr. Huntington From Mr. Outman Dated December 18, 2001).

"Although tax returns * * * are made confidential within the government bureau, *Internal Revenue Code of 1954, §§ 6103, 7213(a)*, copies in the hands of the taxpayer are held subject to discovery." *St. Regis Co. v. United States*, 368 U.S. 208, 218–19, 7 L.Ed.2d 240, 249, 82 S.Ct. 289, 296 (1961). The Government has a legitimate interest in the tax returns as evidence relating to whether Owatonna is in fact an independent company. Owatonna's Federal income tax returns or materials made in support of its filings, be they single or consolidated with Newton Company's, are therefore properly discoverable.

B

REDACTED INFORMATION

Regarding the documents Owatonna has produced or made available for production, the Government complains that instead of producing complete productions, "Owatonna has decided to selectively produce a limited set of documents, *e.g.*, its board minutes, which it has redacted absent any claim of privilege. Moreover, whited-out versions have been provided without any explanation of who performed the redactions made and without any explanation of the guidelines, if any, that were used to create the documents redacted." Plaintiff's Motion at 8 (citations omitted). The Government requests "the production of the redacted documents in their complete form, and all other documents in their entirety, including, but not limited to, Owatonna's board minutes from 1992 to present." *Id.* at 9. In response, Owatonna argues that "any redacted information has been 'whited-out' or deleted because it either lacks relevance or is protected by privilege." Defendant's Response at 5.

"A privilege is either claimed or waived." *Hambro Auto. Corp. v. United States*, 73 Cust. Ct. 236, 238, 381 F. Supp. 1403, 1406 (1974). According to Rule 26(b)(5) of the Rules of this Court, "When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privi-

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[2] Section 6103 of the Tax Code is intended to protect tax information from disclosure by the government. *In re International Horizons, Inc.*, 16 B.R. 484, 485–87 (Bankr. N.D. Ga. 1981), *aff'd*, 689 F.2d 996 (11th Cir. 1982). The portion of section 6103 cited by Owatonna is as follows:

> (14) Disclosure of Return Information to United States Customs Service.—The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in—
>
> (A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or
>
> (B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

26 U.S.C. § 6103(l)(14).

lege or protection." Furthermore, "[a]ny ground not stated in a timely objection is waived." USCIT R. 33(b)(4).

In its brief, Owatonna claims that "Mr. Nelson, counsel for Newton, subsequently advised Mr. Huntington that Newton wishes to assert the claim of attorney-client privilege with regard to the [board minutes]," Defendant's Response at 5. However, the documents before the court do not reveal evidence of an express claim that the information redacted from the board minutes was privileged, nor a description of those things that have not been produced in a manner that would enable the Government to assess the applicability of the privilege. In any case, there is simply no argument that "advising" counsel of the issues months past the due date of discovery, with no extension, can constitute a timely and proper objection. The evidence before the court reveals only that, in a letter to Government counsel from counsel for Owatonna, counsel for Owatonna explains, "The redactions were made because the redacted material was unrelated to this Action."

"A client waives the attorney-client privilege by failing to assert it when confidential information is sought in legal proceedings." *GFI, Inc. v. Franklin Corp.*, 265 F.3d 1268, 1272–73 (Fed. Cir. 2001) (citations omitted). Further, "[f]ailure to assert the privilege objection *correctly* can mean the privilege is waived. * * * In the deposition context, * * * the objection should ordinarily be asserted when a question seeking privileged material is asked * * *." 8 Charles Alan Wright et al., Federal Practice and Procedure § 2016.1, at 228–29 (2d ed. 1994) (emphasis added). By failing to properly assert the attorney-client privilege when privileged information was sought, Owatonna waived the privilege. Owatonna must therefore produce the redacted documents in their complete form.

IV

Conclusion

For the reasons stated above, the court orders Owatonna to provide full and complete answers to all outstanding and unanswered discovery requests of the Government in accordance with the terms of the court's order.

NOTICE OF COURT APPROVAL OF AMENDMENTS TO THE RULES

On December 18, 2001 the Court approved certain amendments to the Rules of the United States Court of International Trade that ***will become effective on April 1, 2002.*** The amendments and the Rules affected by these changes are as follows: USCIT Rules 3, 4, 5, 7, 8, 10, 11, 12, 16, 17, 21, 25, 26, 30, 37, 38, 41, 42, 51, 57, 58, 59, 60, 65, 65.1, 67, 69, 77, 81, 82, a new Rule 82.1, and Rule 89; USCIT Forms 2, 4, 7, 7A, 8, 8A; a new Administrative Order and forms with regard to electronic filing, and the "Judges of the Court" page within the USCIT Rules & Forms.

Language deleted from each rule appears in brackets with strike-overs. New language is indicated by bold type and redline.

Dated: January 18, 2002.

LEO M. GORDON,
Clerk of the Court.

NOTICE OF ERRATA TO AMENDMENTS TO THE RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

On January 18, 2002, the Office of the Clerk issued a Notice of Court Approval of Amendments (approved by the Court on December 18, 2001) to the Rules of the United States Court of International Trade. A review of those amendments has revealed some inadvertent errors.

The changes in the amendments are as follows:

Rule 3, seven Practice Comments should be reflected, one with strike-overs;

Rule 5, seven Practice Comments should be reflected, one new in redline;

Rule 26, the title should read, "General Provisions Governing Discovery; Duty of Disclosure;"

Rule 65.1, on Practice Comment should be reflected;

Rule 81(l), the title should read, "Briefs-Trial and Pretrial Memoranda;"

Form 13, there should be two pages.

A corrected version of these Rules and the Forms now appear at their respective hyperlinks on the home page of the USCIT web site under "Notice of Court Approval of Amendments to the Rules (1/18/02)."

Notice of this Errata and the original Notice (1/18/02) has been transmitted to the following sources for publication:

Bureau of National Affairs, Inc.
Fuglei & Associates
Gould Publications, Inc.
International Business Reports
LEXIS Publishing
Oceana Publications, Inc.
Office of the Law Revision Counsel
Rules Service Company
United States Customs Service
West Group

Dated: February 5, 2002.

LEO M. GORDON,
Clerk of the Court.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C02/13 2/5/02 Restani, J.	G & R Produce	00-05-00250	0805.30.40 1.3¢ per kilogram or 1.1¢ per kilogram	0805.90.00 Free of duty pursuant to NAFTA	Agreed statement of facts	Hidalgo Persian limes
C02/14 2/5/02 Restani, J.	Nissho Iwai American Corp.	00-07-00306	At total invoiced value, f.o.b. China, of $291,707.00 less deductions of $2.33 per pair under 9802.00.8065 or less $0.25 per pair under 9801.00.1096	At total invoiced value, f.o.b. China, of $291,707.00 less deductions of $3.71 per pair under 9802.00.8065 or less $0.61 per pair under 9801.00.1096	Agreed statement of facts	New Orleans Footwear
C02/15 2/5/02 Restani, J.	Tropiresco Int'l	00-05-00252	0805.30.40 1.3¢ per kilogram or 1.1¢ per kilogram	0805.90.00 Free of duty pursuant to NAFTA	Agreed statement of facts	Hidalgo Persian limes
C02/16 2/7/02 Restani, J.	Diazteca Co.	00-05-00253	0805.30.40 1.3¢ per kilogram or 1.1¢ per kilogram	0805.90.00 Free of duty pursuant to NAFTA	Agreed statement of facts	Hidalgo Persian limes
C02/17 2/11/02 Pogue, J.	Asics Tiger Corp.	95-6-00814	6404.19.15 or 6404.10.20 10.5%	6403.19.45 or 6403.99.60 8.5%	Agreed statement of facts	Long Beach Wrestling shoes
C02/18 2/11/02 Restani, J.	Widex Hearing Aid Co.	94-11-00725	9021.90.40 4.2%	9817.00.96 As articles specially designed or adapted for the use of the blind	Agreed statement of facts	New York Parts and accessories for hearing aids

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